

HOUSE OF LORDS

SOUTH LAKELAND DISTRICT COUNCIL
(APPELLANTS)

v.

SECRETARY OF STATE FOR THE ENVIRONMENT AND OTHERS
(RESPONDENTS)

LORD BRIDGE OF HARWICH

My Lords,

Local planning authorities have a duty under section 277(1) of the Town and Country Planning Act 1971, to "determine which parts of their area are areas of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance" and to designate such areas as conservation areas. The Secretary of State has a concurrent power of designation after consultation with a local planning authority. Section 277(8) provides:

"Where any area is for the time being designated as a conservation area, special attention shall be paid to the desirability of preserving or enhancing its character or appearance in the exercise, with respect to any buildings or other land in that area, of any powers under this Act, Part I of the Historic Buildings and Ancient Monuments Act 1953 or the Local Authorities (Historic Buildings) Act 1962."

These were the provisions in force at the material time. They have since been replaced by provisions in the Planning (Listed Buildings and Conservation Areas) Act 1990 to substantially the same effect.

There is no dispute that the intention of section 277(8) is that planning decisions in respect of development proposed to be carried out in a conservation area must give a high priority to the objective of preserving or enhancing the character or appearance of the area. If any proposed development would conflict with that objective, there will be a strong presumption against the grant of planning permission, though, no doubt, in exceptional cases the presumption may be overridden in favour of development which is desirable on the ground of some other public interest. But if a development would not conflict with that objective, the special attention required to be paid to that objective will no longer stand in its way and the development will be permitted or refused in the application of ordinary planning criteria. The issue raised in this appeal is as to the scope of the objective itself. What does the

Lord Bridge
of Harwich
Lord Templeman
Lord Griffiths
Lord Ackner
Lord Oliver
of Aylmerton

"desirability of preserving or enhancing [the] character or appearance" of a conservation area involve? Does it, as the appellant contends, erect a barrier against any building development which does not either enhance or "positively preserve" the character or appearance of the area? Or does it, as the Secretary of State contends, only inhibit development which will in some degree affect the character or appearance of the area adversely? This is the issue of principle which your Lordships must resolve.

The second respondent applied for outline planning permission to build a new vicarage within the curtilage of the existing vicarage in the village of Cartmel in Cumbria. The Cartmel Conservation Area includes the whole of the village. The South Lakeland District Council, as local planning authority, refused permission on the ground, inter alia, that:

"The proposal would be seriously detrimental to the history, architecture and visual character of this part of the Cartmel Conservation Area . . ."

The second respondent appealed to the Secretary of State, who appointed an inspector to determine the appeal.

The inspector considered written representations from the parties and inspected the site. By his decision letter dated 13 July 1989 he allowed the appeal and granted planning permission subject to conditions. The authority applied to quash his decision pursuant to section 245 of the Town and Country Planning Act 1971. Mr. Lionel Read Q.C., sitting as a deputy high court judge, allowed the application, but his decision was in turn reversed by the Court of Appeal (Butler-Sloss and Mann L.JJ. and Sir Christopher Slade): [1991] 1 W.L.R. 1322. The authority now appeals by leave of your Lordships House.

There is no doubt that the inspector had the provisions of section 277(8) clearly in mind. He directed himself in terms that the first issue he had to consider was "what effect the proposal would have of the character and appearance of the Cartmel Conservation Area, having regard to the desirability of preserving or enhancing that character." He described the existing vicarage as "a substantial late 19th century house set well back from the road in grounds containing several fine mature trees." The paragraphs of the decision letter setting out the reasoning which led the inspector to his conclusion read as follows:

"6. The vicarage in my opinion should be regarded as being within the confines of the village. Whilst the proposed development would not fall within the generally accepted definition of infilling, I do not consider that it would be contrary to the important objectives of the settlement policy, designed to protect the countryside from unnecessary development. Providing that the proposed house did not cause harm to the character of the Conservation Area, I consider that it would accord with Policy A3 of the Plan. As regards Policy C5, in my opinion the local authority are fully justified in protecting the open areas within the village, which make a significant contribution to its character. I do not consider however that the mature

domestic curtilage of the Vicarage, which is to a large extent screened from public vantage points by trees and shrubs along the east and west boundaries, and by the stone wall along the frontage to Priest Lane, should be seen in the same light as the nearby open pasture land.

"7. I would accept that the proposed house would be visible from Priest Lane, over the existing wall in front of the site and also when approaching from the east. I consider however that because of the wall and the existing trees and shrubs on the site, that would be retained, the impact of a new house would not be great. In my opinion the effect on the character and appearance of this part of the Conservation Area would be small. I am also satisfied that the grounds of the Vicarage are sufficiently large to accommodate a new house without serious detriment to the setting of the existing building and without affecting the larger trees within the garden that make a particularly significant contribution to the area.

"8. I very much appreciate the concern of the Council and the local people, to preserve and enhance the special quality of Cartmel, and I would agree that they should be strongly supported. I am of the opinion however that providing great care was exercised in the detailed design of the proposed house, having regard to the precise siting, the materials, the massing, the roof pitch, and the details of features such as the eaves and windows, the proposed Vicarage could be accommodated without damaging consequences to the appearance of the village. Whilst there might have been no new building of significance in this part of Cartmel for over 100 years, that is not a reason to prevent development now, if no harm would result.

"9. I have had regard to the potential precedent that could be established were this appeal allowed. In the context of the village, I am satisfied that the physical characteristics of the site make this a special case and I do not consider that a permission for your client's proposal would make it difficult for the Council to refuse applications elsewhere that might have more damaging consequences to the character of what is undoubtedly a most important conservation area."

I have added emphasis to the passages in these paragraphs which seem to me to make clear the inspector's opinion that the development, subject to the appropriate control of the detailed design etc. of the proposed house, would not adversely affect the character or the appearance of the conservation area. This disposes of a subsidiary point as to whether, assuming this to be the right test, the inspector applied it correctly. It was suggested that the inspector's statement in paragraph 7 that ". . . the effect on the character and appearance of this part of the Conservation Area would be small" and the reference in paragraph 9 "more damaging consequences" cast doubt on this. On this point I fully share the views expressed by Mann L.J. in his judgment at p. 1328F-1329A. Read fairly and as a whole the sense of the inspector's reasoning is perfectly clear. Excessively legalistic textual criticism of planning decision letters is something the courts should strongly discourage.

The statement of principle on which the learned deputy judge relied in reaching his conclusion that the inspector had not complied with the duty imposed on him by section 277(8) was expressed in a passage from an earlier judgment of his own in Steinberg v. Secretary of State for the Environment (1988) 58 P. & C.R. 453, p. 457, in the following terms:

"There is, in my judgment, a world of difference between the issue which the inspector defined for himself - whether the proposed development would 'harm' the character of the conservation area - and the need to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. In short, harm is one thing; preservation or enhancement is another. No doubt the inspector has demonstrated his concern that the character of the conservation area should not be harmed. That, in my judgment, is not the same as paying special attention to the desirability of preserving or enhancing that character as well as its appearance. The concept of avoiding harm is essentially negative. The underlying purpose of section 277(8) seems to me to be essentially positive."

This passage and certain other passages from decisions of judges at first instance in which consideration was given to the effect of section 277(8) were extensively reviewed by Glidewell L.J. in The Bath Society v. Secretary of State for the Environment [1991] 1 W.L.R. 1303 in which he stated his own conclusions at pp. 1318-1319 in paragraphs (i) to (vi). These do not directly address the issue raised in the present appeal. It is said, however, that support for Mr. Lionel Read's view of the "positive" approach required to be adopted in the application of section 277(8) is derived from Glidewell L.J.'s propositions (iv) and (vi) which read:

"(iv) If, therefore, the decision-maker decides that the development will either enhance or preserve the character or appearance of the conservation area, this must be a major point in favour of allowing the development.

"(vi) If, however, the decision-maker decides that the proposed development will neither preserve nor enhance the character or appearance of the conservation area, then it is almost inevitable that the development will have some detrimental, i.e. harmful, effect on that character or appearance."

More directly in point is the later passage at p. 1320 where Glidewell L.J. said:

"[Counsel for the Secretary of State] argued that a conclusion that a proposed development would do no harm is equivalent to a conclusion that it will preserve. Even if that is correct, (and adopting the approach of Mr. Lionel Read Q.C. in Steinberg v. Secretary of State for the Environment, 58 P. & C.R. 453, 457, I doubt whether it is) this is not what, in my view, the inspector himself concluded."

The judgments in the Court of Appeal in the instant case properly undertook a full examination of the judgment of Glidewell L.J. in the Bath case, leading, I have no doubt correctly, to the conclusion that it did not afford a binding precedent which required the court to dismiss the appeal in this case. But, insofar as there is any divergence of opinion to be found between the judgment of Glidewell L.J. in the Bath case and the judgments of the Court of Appeal in this, your Lordships are, of course, at liberty to choose between them. Accordingly, I can turn directly to the affirmative reasoning of the court in this case which is epitomised in the following passage from the judgment of Mann L.J. at pp. 1326-1327:

"In seeking to resolve the issue I start with the obvious. First, that which is desirable is the preservation or enhancement of the character or appearance of the conservation area. Second, the statute does not in terms require that a development must perform a preserving or enhancing function. Such a requirement would have been a stringent one which many an inoffensive proposal would have been inherently incapable of satisfying. I turn to the words. Neither 'preserving' nor 'enhancing' is used in any meaning other than its ordinary English meaning. The court is not here concerned with enhancement, but the ordinary meaning of 'preserve' as a transitive verb is 'to keep safe from harm or injury; to keep in safety, save, take care of, guard.' Oxford English Dictionary, 2nd ed. (1989), vol. XII, p. 404. In my judgment character or appearance can be said to be preserved where they are not harmed. Cases may be envisaged where development would itself make a positive contribution to preservation of character or appearance. A work of reinstatement might be such. The parsonages board never advocated the new vicarage on that basis. It was not a basis which the inspector was invited to address but importantly he did not have to address it because the statute does not require him so to do.

"The statutorily desirable object of preserving the character or appearance of an area is achieved either by a positive contribution to preservation or by development which leaves character or appearance unharmed, that is to say, preserved."

My Lords, I have no hesitation in agreeing with this construction of section 277(8). It not only gives effect to the ordinary meaning of the statutory language; it also avoids imputing to the legislature a rigidity of planning policy for which it is difficult to see any rational justification. We may, I think, take judicial notice of the extensive areas, both urban and rural, which have been designated as conservation areas. It is entirely right that in any such area a much stricter control over development than elsewhere should be exercised with the object of preserving or, where possible, enhancing the qualities in the character or appearance of the area which underlie its designation as a conservation area under section 277. But where a particular development will not have any adverse effect on the character or appearance of the area and is otherwise unobjectionable on planning grounds, one may ask rhetorically what possible planning reason there can be for refusing to allow it. All building

development must involve change and if the objective of section 277(8) were to inhibit any building development in a conservation area which was not either a development by way of reinstatement or restoration on the one hand ("positive preservation") or a development which positively enhanced the character or appearance of the area on the other hand, it would surely have been expressed in very different language from that which the draftsman has used.

I would dismiss the appeal.

LORD TEMPLEMAN

My Lords,

For the reasons set forth in the speech of my noble and learned friend Lord Bridge of Harwich I would dismiss this appeal.

LORD GRIFFITHS

My Lords,

I have had the advantage of reading in draft the speech prepared by my noble and learned friend, Lord Bridge of Harwich. I agree with it and for the reasons which he gives, I, too, would dismiss the appeal.

LORD ACKNER

My Lords,

I have had the advantage of reading in draft the speech prepared by my noble and learned friend, Lord Bridge of Harwich. I agree with it and for the reasons which he gives, I, too, would dismiss the appeal.

LORD OLIVER OF AYLWERTON

My Lords,

I have had the advantage of reading in draft the speech prepared by my noble and learned friend, Lord Bridge of Harwich. I agree with it and for the reasons which he gives, I, too, would dismiss the appeal.

South Lakeland District Council (Appellants) v. Secretary of State for the Environment and others (Respondents)

My Lords, I beg to move that the Report of the Appellate Committee be now considered.

The Question is:-

That the Report of the Appellate Committee be now considered.

As many as are of that opinion will say "Content".
The contrary "Not-content".

The Contents have it.

(Their Lordships will indicate what Order they would propose to make.)

My Lords, I beg to move that the Report of the Appellate Committee be agreed to.

The Question is:-

That the Report of the Appellate Committee be agreed to.

As many as are of that opinion will say "Content".
The contrary "Not-content".

The Contents have it.

- PLEASE TURN OVER -

South Lakeland District Council (Appellants) v. Secretary of State for the Environment and others (Respondents)

The Question is:-

That the Order appealed from be set aside.

As many as are of that opinion will say "Content".
The contrary "**Not-content**".

The Not-contents have it.

The Question is:-

That the Order of the Court of Appeal of the 12th day of March 1991 be affirmed and the appeal dismissed with costs.

As many as are of that opinion will say "**Content**".
The contrary "Not-content".

The Contents have it.

South Lakeland District Council (Appellants)

v.

**Secretary of State for the Environment and others
(Respondents)**

JUDGMENT

Die Jovis 30^o Januarii 1992

Upon Report from the Appellate Committee to whom was referred the Cause South Lakeland District Council against Secretary of State for the Environment and others, That the Committee had heard Counsel as well on Monday the 9th as on Tuesday the 10th days of December last, upon the Petition and Appeal of South Lakeland District Council of Stricklandgate House, Kendal, Cumbria, praying that the matter of the Order set forth in the Schedule thereto, namely an Order of Her Majesty's Court of Appeal of the 12th day of March 1991, might be reviewed before Her Majesty the Queen in Her Court of Parliament and that the said Order might be reversed, varied or altered or that the Petitioners might have such other relief in the premises as to Her Majesty the Queen in Her Court of Parliament might seem meet; as upon the case of the Secretary of State for the Environment lodged in answer to the said Appeal; and due consideration had this day of what was offered on either side in this Cause:

It is Ordered and Adjudged, by the Lords Spiritual and Temporal in the Court of Parliament of Her Majesty the Queen assembled, That the said Order of Her Majesty's Court of Appeal of the 12th day of March 1991 complained of in the said Appeal be, and the same is hereby, Affirmed and that the said Petition and Appeal be, and the same is hereby, dismissed this House: And it is further Ordered, That the Appellants do pay or cause to be paid to the said Respondents the Costs incurred by them in respect of the said Appeal, the amount thereof to be certified by the Clerk of the Parliaments if not agreed between the parties.

Cler: Parliamentor: